

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2852

PETITION OF JAN PAUL A. KOPINSKI

OPINION OF THE BOARD
(Opinion Adopted: February 27, 2013)
Effective Date of Opinion: March 1, 2013)

Case No. S-2852 is an application for a special exception, under Section 59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment. The subject property is Lot 31, Block 5, Glenallan Subdivision, located at 2010 Wallace Avenue, Silver Spring, Maryland 20902, in the R-90 Zone.

The Hearing Examiner for Montgomery County held a hearing on the application on January 31, 2013, closed the record in the case on February 7, 2013, and on February 8, 2013, issued a Report and Recommendation for approval of the special exception.

Decision of the Board:	Special Exception Granted Subject to the Conditions Enumerated Below.
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The Board of Appeals considered the Report and Recommendation at its Worksession on February 27, 2013. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception subject to the following conditions:

1. The Petitioner is bound by his testimony, representations and exhibits of record to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and Recommendation and in this Opinion;
2. The Petitioner must comply with the following conditions set forth in the Memorandum of Robert Goff, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 15):

- a. Install egress window in bedroom. Window must be no more than 44" from floor to window opening.
 - b. Secure all baseboard heaters in all rooms.
 - c. Patch all holes and paint all walls and ceilings in basement.
 - d. Replace broken window in living room.
 - e. Replace door to HVAC closet.
 - f. Box in wire from bedroom to kitchen stove.
 - g. Finish drywall at kitchen doorway.
 - h. Replace kitchen floor.
 - i. Install doors on kitchen cabinets.
 - j. Bulk head going into kitchen must be no less than 78" from floor. The current height is 73".
 - k. Secure all outlet boxes in basement.
 - l. Install smoke detector in hallway outside of bedroom.
 - m. Remove all solid waste / pizza boxes, beer bottles, boxes and papers from basement and basement must be cleaned.
 - n. Have HVAC system and flue inspected by a licensed contractor.
 - o. The driveway will accommodate 2 cars.
 - p. There is limited street parking.
 - q. There is 418 sq feet of habitable space. The total square feet of the Accessory Apartment is 809.4. [Up to]2 people can live in the unit or a family of [no more than] 3.
3. Petitioner must comply with the determination of the Housing Code Inspector as to limits on occupancy in the accessory apartment and must comply with any other directions of the Housing Code Inspector to ensure safe and code-compliant occupancy;
4. Petitioner must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. The accessory apartment must not be located on a lot that is occupied by a family of unrelated persons, or where there is a guest room for rent, a boardinghouse or a registered living unit;
6. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
7. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.


On a motion by Stanley B. Boyd, seconded by Carolyn J. Shawaker, with John H. Pentecost and David K. Perdue Vice-Chair in agreement, and Catherine G. Titus, Chair, necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



David K. Perdue
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 1st day of March, 2013.



Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

